

JUDGE: JLM
 AUSA: FUL
 USCA: AMM

UNITED STATES DISTRICT COURT

for the

Western District of New York

United States of America

v.

Nyhan M. Barber

Defendant

ORDER SETTING CONDITIONS OF RELEASE

Case Number:

1:20-cr-00145-JLM

IT IS ORDERED that the release of the defendant is subject to these conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.
- (2) The defendant must cooperate in the collection of a DNA sample if the collection is authorized by 42 U.S.C. § 14135a.
- (3) The defendant shall immediately advise the court, defense counsel, U.S. Attorney and the U.S. Probation and Pretrial Services office in writing before any change in address and telephone number.
- (4) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall appear at (if blank, to be notified)

U.S. District Court

on

As directed

and as directed thereafter.

Place

Date and Time

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (X) (5) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (6) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of _____ dollars (\$ _____) in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community.

IT IS FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- () (7) The defendant is placed in the custody of:
(Name of person or organization): _____

(City and state): _____ (Tel. No.) _____

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or is no longer in the custodian's custody.

Signed: _____

Custodian or Proxy

Date

DISTRIBUTION:

COURT

DEFENDANT

PRETRIAL SERVICES

U.S. ATTORNEY

U.S. MARSHAL

Additional Conditions of Release (continued)

(8) The defendant shall:

- (☒) (a) Report to the Pretrial Services within 24 hours of release, telephone number (716) 551-4241, and as directed thereafter.
- () (b) Execute a bond or an agreement to forfeit upon failing to appear as required the following sum of money or designated property:
- () (c) Post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described: _____
- () (d) Execute a bail bond with solvent securities in the amount of \$ _____
- () (e) Maintain or actively seek employment.
- () (f) Maintain or commence an educational program.
- () (g) Surrender any passport/passport card to: the Clerk of the Court¹. Surrender other international travel documents to appropriate authorities (i.e. Enhanced Driver's License or NEXUS card).
- () (h) Not obtain a passport or other international travel document (i.e. Enhanced Driver's License or NEXUS card).
- (☒) (i) Restrict travel to: WDM, unless court permission is granted to travel elsewhere.
- (☒) (j) Remain at a verifiable address as approved by Pretrial Services.
- () (k) Avoid all contact with codefendants and defendants in related cases unless approved by Pretrial Services.
- (☒) (l) Avoid all contact, directly or indirectly, with any persons who are or who may become a victim or potential witness in the subject investigation or prosecution, including but not limited to: _____
- (☒) (m) Submit to a mental health evaluation and/or treatment as approved by Pretrial Services. The defendant shall contribute to the cost of services rendered in an amount to be determined by the probation officer based on ability to pay or availability of third party payments.
- () (n) Return to custody each (week)day as of _____ after being released each (week)day as of _____ for employment, schooling, or the following limited purpose(s): _____
- () (o) Maintain residence at a halfway house or community corrections center, as approved by Pretrial Services.
- (☒) (p) Refrain from possessing a firearm, destructive device, or other dangerous weapon.
- (☒) (q) Refrain from (☒) any () excessive use of alcohol.
- () (r) Refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner, and/or any other mind altering substances.
- () (s) Submit to any method of testing required by the pretrial services office or the supervising officer for determining whether the defendant is using a prohibited substance. Such methods may be used with random frequency and include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing, including co-payment.
- () (t) Participate in a program of inpatient or outpatient substance abuse therapy and counseling approved by Pretrial Services. The defendant shall contribute to the cost of services rendered in an amount to be determined by the probation officer based on ability to pay or availability of third party payments.
- (☒) (u) Refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited ~~substance testing or~~ electronic monitoring which is (are) required as a condition(s) of release.
- (☒) (v)(1) Participate in one of the following location restriction programs and abide by all the requirements of the program which () will or () will not include electronic monitoring or other location verification system. You shall pay all or part of the costs of the program based upon your ability to pay as determined by the officer.
- () (i) **Curfew.** You are restricted to your residence every day () from _____ to _____, or as directed by the officer.
- (☒) (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities as pre-approved by the officer.
- () (iii) **Home Incarceration.** You are restricted to your residence at all times except for medical needs or treatment, religious services, and court appearances pre-approved by the officer.
- () (v)(2) Participate in one of the following location restriction programs and abide by all the requirements of the program which will be monitored by a Global Positioning Satellite system (G.P.S.). You shall pay all or part of the costs of the program based upon your ability to pay as determined by the officer.
- () (i) **Curfew.** You are restricted to your residence every day () from _____ to _____, or as directed by the officer.
- () (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities as pre-approved by the officer.
- () (iii) **Home Incarceration.** You are restricted to your residence at all times except for medical needs or treatment, religious services, and court appearances pre-approved by the officer.
- (X) (w) Report within 72 hours, to Pretrial Services any contact with any law enforcement personnel, including, but not limited to, any arrest, questioning, or traffic stop.
- () _____
- () _____

¹For U.S. Passports, the passport will be returned to the U.S. Office of Passport Policy and Planning upon conviction; For Foreign Passports, the passport will be forwarded to the Bureau of Immigration and Customs Enforcement (ICE); The passport will **only** be returned to defendant if the case is dismissed.

Additional Conditions of Release (continued)

- (x) (x) The defendant is prohibited from possessing or downloading any pornography.
- (x) (y) The defendant shall participate in the computer/internet monitoring program administered by the U.S. Probation Office. The defendant must provide the U.S. Probation Office advanced notification of any computer(s), automated service(s), or connected device(s). The U.S. Probation Office is authorized to install any application as necessary on computer(s) or connected device(s) owned or operated. The defendant may be required to pay the cost of monitoring services at a monthly rate provided by the U.S. Probation Office. The U.S. Probation Office shall randomly monitor the defendant's computer(s), connected device(s), and/or storage media. The defendant shall consent to and cooperate with unannounced examinations of any computer equipment owned or used by the defendant, including but not limited to retrieval and copying of all data from the computer(s), connected device(s), storage media, and any internal or external peripherals, and may involve removal of such equipment for the purpose of conducting a more thorough inspection.
- (x) (z) The defendant shall participate in mental health intervention specifically designed for defendants charged with sexual offenses including copayment for services as required by USPO. The defendant is to comply with the mandates of the treatment program and is not to leave such treatment until discharge is agreed to by the U.S. Probation Office and treating agency.
- (x) The defendant shall not have any contact with any child under the age of 18 without the direct supervision of a responsible adult. If the defendant has inadvertent unsupervised contact with a child under the age of 18, it is to be immediately reported to the U.S. Probation Office.
- (x) The defendant is prohibited from possessing any devices with internet access, including devices such as but not limited to game systems (Playstation 3, PSP, Xbox, Wii) and cellular phones.

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment, and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim, or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant or officer of the court. The penalties for tampering, retaliating and intimidation are significantly more serious if they involve a killing or attempted killing.

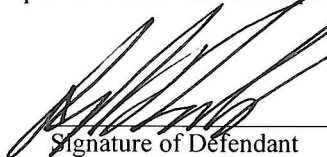
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned for not more than two years, or both;
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned for not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.


Signature of Defendant

Buffalo, New York
City and State

Directions to United States Marshal

(X) The defendant is ORDERED released after processing.

() The United States Marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 11/25/2020


Signature of Judicial Officer

JEREMIAH J. MCCARTHY

UNITED STATES MAGISTRATE JUDGE
Name and Title of Judicial Officer